

REFERENCE TITLE: home equity purchasers; licensure; regulation

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2510

Introduced by
Representative Miranda B

AN ACT

AMENDING SECTIONS 6-901 AND 6-941, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4; RELATING TO HOME EQUITY PURCHASERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-901, Arizona Revised Statutes, is amended to
3 read:

4 6-901. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Affiliate" means an entity which directly or indirectly, through
7 one or more intermediaries, controls, is controlled by or is under common
8 control with the entity specified.

9 2. "Compensation" means anything of value or any benefit, including
10 points, commissions, bonuses, referral fees, loan origination fees and other
11 similar fees but excluding periodic interest resulting from the application
12 of the note rate of interest to the outstanding principal balance remaining
13 unpaid from time to time.

14 3. "Continuing education unit" means a fifty minute period of time in
15 a continuing education course that relates to the mortgage industry or to
16 mortgage transactions, including courses taken to maintain recognized
17 industry designations.

18 4. "Investor" means a person who lends or invests money in mortgage
19 loans.

20 5. "License" means a license issued under this article.

21 6. "Licensee" means a person licensed under this article.

22 7. "Loan originator" has the same meaning prescribed in section 6-991.

23 8. "Mortgage broker" means a person who is not exempt under section
24 6-902 and who for compensation or in the expectation of compensation either
25 directly or indirectly makes, negotiates or offers to make or negotiate a
26 mortgage loan.

27 9. "Mortgage loan" means a loan secured by a mortgage or deed of trust
28 or any lien interest on real estate located in this state created with the
29 consent of the owner of the real estate, INCLUDING ANY MORTGAGE LOAN
30 TRANSACTION DESCRIBED IN TITLE 33, CHAPTER 6, ARTICLE 4.

31 10. "Mortgage loan closing" means the day by which all documents
32 relating to the mortgage loan have been executed and recorded and all monies
33 have been accounted for under the terms of the escrow instructions.

34 Sec. 2. Section 6-941, Arizona Revised Statutes, is amended to read:

35 6-941. Definitions

36 In this article, unless the context otherwise requires:

37 1. "Affiliate" means an entity which directly or indirectly, through
38 one or more intermediaries, controls, is controlled by or is under common
39 control with the entity specified.

40 2. "Compensation" means anything of value or any benefit, including
41 points, commissions, bonuses, referral fees, loan origination fees and other
42 similar fees but excluding periodic interest resulting from the application
43 of the note rate of interest to the outstanding principal balance remaining
44 unpaid from time to time.

45 3. "License" means a license issued under this article.

1 4. "Licensee" means a person licensed under this article.

2 5. "Mortgage banker" means a person who is not exempt under section
3 6-942 and who for compensation or in the expectation of compensation either
4 directly or indirectly makes, negotiates or offers to make or negotiate a
5 mortgage banking loan or a mortgage loan.

6 6. "Mortgage banking loan" means a loan which is funded exclusively
7 from the mortgage banker's own resources, which is directly or indirectly
8 secured by a mortgage or deed of trust or any lien interest on real estate
9 located in this state and which is created with the consent of the owner of
10 the real property. For the purposes of this paragraph, "own resources" means
11 any of the following:

12 (a) Cash, corporate capital, warehouse credit lines at commercial
13 banks, savings banks or savings and loan associations or other sources that
14 are liability items on the mortgage banker's financial statements for which
15 its assets are pledged.

16 (b) Correspondent contracts between the mortgage banker and a bank,
17 savings bank, trust company, savings and loan association, credit union,
18 profit sharing or pension trust, consumer lender or insurance company.

19 (c) The mortgage banker's affiliates' cash, corporate capital,
20 warehouse credit lines at commercial banks or other sources that are
21 liability items on the affiliates' financial statements for which the
22 affiliates' assets are pledged.

23 7. "Mortgage banking loan closing" means the day by which all
24 documents relating to the mortgage banking loan or mortgage loan have been
25 executed and recorded and all monies have been accounted for.

26 8. "Mortgage loan" means any loan, other than a mortgage banking loan,
27 secured by a mortgage or deed of trust or any lien interest on real estate
28 located in this state and created with the consent of the owner of the real
29 estate, **INCLUDING ANY MORTGAGE LOAN TRANSACTION DESCRIBED IN TITLE 33,**
30 **CHAPTER 6, ARTICLE 4.**

31 Sec. 3. Title 33, chapter 6, Arizona Revised Statutes, is amended by
32 adding article 4, to read:

33 ARTICLE 4. HOME EQUITY PURCHASERS

34 **33-761. Definitions**

35 **IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:**

36 1. **"BONA FIDE PURCHASER OR ENCUMBRANCER FOR VALUE" MEANS ANYONE ACTING**
37 **IN GOOD FAITH WHO PURCHASES THE RESIDENTIAL REAL PROPERTY FROM THE EQUITY**
38 **PURCHASER FOR VALUABLE CONSIDERATION OR PROVIDES THE EQUITY PURCHASER WITH A**
39 **MORTGAGE OR DEED OF TRUST OR WHO PROVIDES A SUBSEQUENT BONA FIDE PURCHASER**
40 **WITH A MORTGAGE OR DEED OF TRUST IF THE BONA FIDE PURCHASER HAD NO NOTICE OF**
41 **THE EQUITY SELLER'S CONTINUING RIGHT TO, OR EQUITY IN, THE PROPERTY BEFORE**
42 **THE ACQUISITION OF TITLE OR ENCUMBRANCE OR OF ANY VIOLATION OF THIS ARTICLE**
43 **BY THE EQUITY PURCHASER AS RELATED TO THE PROPERTY.**

44 2. **"BUSINESS DAY" MEANS ANY CALENDAR DAY, EXCLUDING SATURDAYS,**
45 **SUNDAYS, OR OTHER LEGAL HOLIDAYS.**

1 3. "COVERED CONTRACT" MEANS ANY CONTRACT, AGREEMENT OR ARRANGEMENT, OR
2 ANY TERM OF A CONTRACT, AGREEMENT OR ARRANGEMENT, BETWEEN AN EQUITY PURCHASER
3 AND EQUITY SELLER THAT IS EITHER:

4 (a) INCIDENT TO THE SALE OF A RESIDENCE IN FORECLOSURE.

5 (b) INCIDENT TO THE SALE OF A RESIDENCE IN FORECLOSURE OR DEFAULT IF
6 THE CONTRACT, AGREEMENT OR ARRANGEMENT INCLUDES A RECONVEYANCE ARRANGEMENT.

7 4. "DEFAULT" MEANS THAT THE EQUITY SELLER IS TWO MONTHS OR MORE BEHIND
8 IN PAYMENTS ON A MORTGAGE OR A DEED OF TRUST.

9 5. "EQUITY PURCHASER":

10 (a) MEANS ANY PERSON WHO ACQUIRES TITLE TO ANY RESIDENCE THAT IS THE
11 SUBJECT OF A NOTICE OF TRUSTEE SALE, THAT IS IN FORECLOSURE OR, IF
12 APPLICABLE, THAT IS IN DEFAULT, OR THAT PERSON'S REPRESENTATIVE, EXCEPT A
13 PERSON WHO ACQUIRES TITLE AS FOLLOWS:

14 (i) TO USE THE PROPERTY AS A PRIMARY RESIDENCE AND THE PERSON ACTUALLY
15 USES THE PROPERTY AS A PRIMARY RESIDENCE.

16 (ii) BY A TRUSTEE'S DEED ON SALE PURSUANT TO LAW.

17 (iii) AT ANY SALE OF PROPERTY AUTHORIZED BY STATUTE.

18 (iv) BY ORDER OR JUDGMENT OF ANY COURT.

19 (v) FROM A SPOUSE OR FROM A PARENT, GRANDPARENT, CHILD, GRANDCHILD OR
20 SIBLING OF THE PERSON OR THE PERSON'S SPOUSE.

21 (vi) AS AN INTERNAL REVENUE SERVICE DESIGNATED NONPROFIT HOUSING
22 ORGANIZATION OR AS A PUBLIC HOUSING AGENCY.

23 (vii) AS A BONA FIDE PURCHASER OR ENCUMBRANCER FOR VALUE.

24 (b) DOES NOT INCLUDE A PERSON DOING BUSINESS UNDER ANY LAW OF THIS
25 STATE OR THE UNITED STATES THAT REGULATES BANKS, TRUST COMPANIES, SAVINGS AND
26 LOAN ASSOCIATIONS, CREDIT UNIONS, INSURANCE COMPANIES, TITLE INSURERS,
27 INSURANCE PRODUCERS OR ESCROW COMPANIES AUTHORIZED TO CONDUCT BUSINESS IN THE
28 STATE WHILE THE PERSON PERFORMS SERVICES AS PART OF THE PERSON'S NORMAL
29 BUSINESS ACTIVITIES. EQUITY PURCHASER DOES NOT INCLUDE AN AFFILIATE OR
30 SUBSIDIARY OF ANY OF THE FOREGOING OR AN EMPLOYEE OR AGENT ACTING ON BEHALF
31 OF ANY OF THE FOREGOING.

32 6. "EQUITY SELLER" MEANS A NATURAL PERSON WHO IS A PROPERTY OWNER OR
33 HOMEOWNER AT THE TIME OF THE EQUITY SALE.

34 7. "FORECLOSURE" MEANS THAT AN ACTION PURSUANT TO SECTION 33-721 HAS
35 BEEN FILED TO FORECLOSE A MORTGAGE OR DEED OF TRUST SECURED BY THE SUBJECT
36 PROPERTY OR THAT THE SUBJECT PROPERTY IS ON AN ACTIVE PROPERTY TAX LIEN SALE
37 LIST.

38 8. "PROPERTY OWNER" OR "HOMEOWNER" MEANS ANY OR ALL RECORD TITLE
39 OWNERS OF THE RESIDENTIAL REAL PROPERTY IN FORECLOSURE OR, IF APPLICABLE, IN
40 DEFAULT AT THE TIME OF THE EQUITY SALE.

41 9. "RECONVEYANCE ARRANGEMENT" MEANS:

42 (a) THE TRANSFER OF TITLE TO RESIDENTIAL REAL PROPERTY BY AN EQUITY
43 SELLER WHO IS IN DEFAULT OR FORECLOSURE, EITHER BY TRANSFER OF INTEREST FROM
44 AN EQUITY SELLER TO AN EQUITY PURCHASER OR BY CREATION OF A MORTGAGE, DEED OF
45 TRUST OR OTHER LIEN OR ENCUMBRANCE DURING THE TIME OF DEFAULT OR FORECLOSURE

1 THAT ALLOWS THE EQUITY PURCHASER TO OBTAIN LEGAL OR EQUITABLE TITLE TO ALL OR
2 PART OF THE PROPERTY.

3 (b) THE SUBSEQUENT CONVEYANCE OR PROMISE OF A SUBSEQUENT CONVEYANCE OF
4 AN INTEREST, INCLUDING A PURCHASE AGREEMENT, OPTION TO PURCHASE OR LEASE,
5 BACK TO THE EQUITY SELLER BY THE EQUITY PURCHASER THAT ALLOWS THE EQUITY
6 SELLER TO REGAIN POSSESSION OF THE PROPERTY.

7 10. "REPRESENTATIVE" MEANS A PERSON WHO IN ANY MANNER SOLICITS,
8 INDUCES, ARRANGES OR CAUSES ANY EQUITY SELLER TO TRANSFER TITLE OR SOLICITS
9 ANY MEMBER OF THE EQUITY SELLER'S FAMILY OR HOUSEHOLD TO INDUCE OR CAUSE ANY
10 EQUITY SELLER TO TRANSFER TITLE TO THE RESIDENCE IN FORECLOSURE OR, IF
11 APPLICABLE, IN DEFAULT TO THE EQUITY PURCHASER.

12 11. "RESIDENCE" AND "RESIDENTIAL REAL PROPERTY" MEANS RESIDENTIAL REAL
13 PROPERTY CONSISTING OF ONE TO FOUR FAMILY DWELLING UNITS, ONE OF WHICH THE
14 EQUITY SELLER OCCUPIES OR OCCUPIED AT A TIME IMMEDIATELY BEFORE THE EQUITY
15 SALE AS A PRIMARY RESIDENCE.

16 12. "SALE OF A RESIDENCE" INCLUDES A TRANSACTION IN WHICH AN EQUITY
17 SELLER RECEIVES CONSIDERATION FROM THE EQUITY PURCHASER AND A TRANSACTION
18 INVOLVING A TRANSFER OF TITLE TO THE EQUITY PURCHASER IN WHICH NO
19 CONSIDERATION IS PROVIDED TO THE EQUITY SELLER.

20 33-762. Licensing of equity purchaser required

21 A PERSON SHALL NOT ACT AS AN EQUITY PURCHASER IN THIS STATE IF THE
22 PERSON IS NOT LICENSED PURSUANT TO TITLE 6, CHAPTER 9, ARTICLE 1 OR 2.

23 33-763. Covered contracts; notices

24 A. EVERY COVERED CONTRACT AND NOTICE OF CANCELLATION ATTACHED TO THE
25 CONTRACT SHALL BE WRITTEN IN AT LEAST TWELVE-POINT BOLD TYPE, IN ENGLISH OR
26 IN BOTH ENGLISH AND SPANISH IF SPANISH IS THE PRIMARY LANGUAGE OF THE EQUITY
27 SELLER, AND SHALL BE FULLY COMPLETED AND SIGNED AND DATED BY THE EQUITY
28 SELLER AND EQUITY PURCHASER. ANY INSTRUMENT OF CONVEYANCE SHALL BECOME
29 EFFECTIVE NO SOONER THAN MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE DATE ON
30 WHICH THE COVERED CONTRACT IS EXECUTED.

31 B. ALL COVERED CONTRACTS SHALL CONTAIN THE ENTIRE AGREEMENT OF THE
32 PARTIES AND SHALL INCLUDE THE FOLLOWING TERMS:

33 1. THE NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER OF THE EQUITY
34 PURCHASER.

35 2. THE ADDRESS OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE,
36 DEFAULT.

37 3. THE TOTAL CONSIDERATION TO BE GIVEN BY THE EQUITY PURCHASER IN
38 CONNECTION WITH OR INCIDENT TO THE SALE.

39 4. A COMPLETE DESCRIPTION OF THE TERMS OF PAYMENT OR OTHER
40 CONSIDERATION, INCLUDING ANY SERVICES OF ANY NATURE THE EQUITY PURCHASER
41 AGREES TO PERFORM FOR THE EQUITY SELLER BEFORE OR AFTER THE SALE.

42 5. THE TIME, IF ANY, AT WHICH PHYSICAL POSSESSION OF THE RESIDENCE
43 WILL BE TRANSFERRED TO THE EQUITY PURCHASER AND THE RESIDENCE WILL BE VACATED
44 BY THE EQUITY SELLER.

45 6. THE TERMS OF ANY RENTAL OR LEASE AGREEMENT.

1 7. THE TERMS OF ANY RECONVEYANCE ARRANGEMENT.

2 8. A NOTICE OF CANCELLATION AS PROVIDED IN SUBSECTION E OF THIS
3 SECTION.

4 9. THE FOLLOWING NOTICE, WHICH MUST CONTAIN THE NAME OF THE EQUITY
5 PURCHASER AND THE DATE AND TIME BY WHICH THE COVERED CONTRACT MUST BE
6 CANCELED. THE EQUITY PURCHASER SHALL COMPLETE THE NOTICE, WHICH SHALL APPEAR
7 ON THE CONTRACT IN IMMEDIATE PROXIMITY TO THE SPACE RESERVED FOR THE EQUITY
8 SELLER'S SIGNATURE AND SHALL BE IN AT LEAST FOURTEEN-POINT BOLD TYPE IF THE
9 COVERED CONTRACT IS PRINTED OR IN CAPITAL LETTERS IF THE COVERED CONTRACT IS
10 TYPED:

11 NOTICE REQUIRED BY ARIZONA LAW

12 YOU MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT
13 OF ____ (DATE) _____. ____ (NAME OF EQUITY PURCHASER) ____ OR ANYONE
14 WORKING FOR ____ (NAME OF EQUITY PURCHASER) ____ CANNOT ASK YOU TO
15 SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT UNTIL YOUR
16 RIGHT TO CANCEL THIS CONTRACT HAS ENDED. SEE THE ATTACHED
17 NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.
18 YOU SHOULD ALWAYS CONSULT AN ATTORNEY OR COMMUNITY ORGANIZATION
19 BEFORE SIGNING ANY LEGAL DOCUMENTS CONCERNING YOUR HOME. IT IS
20 ADVISABLE THAT YOU FIND YOUR OWN ATTORNEY AND NOT CONSULT WITH
21 AN ATTORNEY WHO HAS BEEN PROVIDED TO YOU BY THE PURCHASER. THE
22 LAW REQUIRES THAT THIS CONTRACT CONTAIN THE ENTIRE AGREEMENT.
23 YOU SHOULD NOT RELY ON ANY OTHER WRITTEN OR ORAL AGREEMENT OR
24 PROMISE.

25 C. THE EQUITY PURCHASER SHALL ACCURATELY ENTER IN THE NOTICE SET FORTH
26 IN SUBSECTION B OF THIS SECTION THE DATE ON WHICH THE RIGHT TO CANCEL ENDS.
27 THE COVERED CONTRACT REQUIRED BY THIS SECTION SHALL SURVIVE DELIVERY OF ANY
28 INSTRUMENT OF CONVEYANCE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE,
29 IN DEFAULT AND SHALL HAVE NO EFFECT ON PERSONS OTHER THAN THE PARTIES TO THE
30 COVERED CONTRACT.

31 D. IN ADDITION TO THE RIGHT OF RESCISSION DESCRIBED IN SECTION 33-764,
32 SUBSECTION E, THE EQUITY SELLER HAS THE RIGHT TO CANCEL ANY COVERED CONTRACT
33 WITH AN EQUITY PURCHASER UNTIL MIDNIGHT OF THE FIFTH BUSINESS DAY FOLLOWING
34 THE DAY ON WHICH THE EQUITY SELLER AND EQUITY PURCHASER SIGN A COVERED
35 CONTRACT THAT COMPLIES WITH THIS SECTION. CANCELLATION OCCURS WHEN THE
36 EQUITY SELLER, OR A REPRESENTATIVE OF THE EQUITY SELLER, PERSONALLY DELIVERS
37 WRITTEN NOTICE OF CANCELLATION TO THE ADDRESS SPECIFIED IN THE COVERED
38 CONTRACT OR SENDS A LETTER INDICATING CANCELLATION TO THE BUSINESS ADDRESS OF
39 THE EQUITY PURCHASER LISTED IN THE COVERED CONTRACT VIA FAX, UNITED STATES
40 MAIL OR OTHER MEANS OF WRITTEN COMMUNICATION, OR THROUGH AN ESTABLISHED
41 COMMERCIAL LETTER DELIVERY SERVICE. PROOF OF FAX DELIVERY OR PROOF OF
42 MAILING CREATES A PRESUMPTION THAT THE NOTICE OF CANCELLATION HAS BEEN
43 DELIVERED. A NOTICE OF CANCELLATION GIVEN BY THE EQUITY SELLER PURSUANT TO
44 THIS SUBSECTION NEED NOT TAKE THE PARTICULAR FORM AS PROVIDED WITH THE
45 COVERED CONTRACT AND, HOWEVER EXPRESSED, IS EFFECTIVE IF IT INDICATES THE

1 INTENTION OF THE EQUITY SELLER NOT TO BE BOUND BY THE COVERED CONTRACT.
 2 WITHIN TEN DAYS AFTER RECEIPT OF A NOTICE OF CANCELLATION GIVEN IN ACCORDANCE
 3 WITH THIS SUBSECTION, THE EQUITY PURCHASER SHALL RETURN WITHOUT CONDITION ANY
 4 ORIGINAL COVERED CONTRACT AND ANY OTHER DOCUMENTS SIGNED BY THE EQUITY SELLER
 5 AS WELL AS ANY FEE OR OTHER CONSIDERATION RECEIVED BY THE EQUITY PURCHASER
 6 FROM THE EQUITY SELLER. CANCELLATION OF THE CONTRACT SHALL RELEASE THE
 7 EQUITY SELLER OF ALL OBLIGATIONS TO PAY FEES TO THE EQUITY PURCHASER.

8 E. THE COVERED CONTRACT SHALL BE ACCOMPANIED BY A FORM COMPLETED BY
 9 THE EQUITY PURCHASER IN DUPLICATE, ENTITLED "NOTICE OF CANCELLATION" IN AT
 10 LEAST TWELVE-POINT BOLD TYPE IF THE COVERED CONTRACT IS PRINTED OR IN CAPITAL
 11 LETTERS IF THE COVERED CONTRACT IS TYPED. THIS FORM SHALL BE ATTACHED TO THE
 12 COVERED CONTRACT, SHALL BE EASILY DETACHABLE AND SHALL CONTAIN, IN AT LEAST
 13 TWELVE-POINT TYPE IF THE COVERED CONTRACT IS PRINTED OR IN CAPITAL LETTERS IF
 14 THE COVERED CONTRACT IS TYPED, THE FOLLOWING STATEMENT WRITTEN IN THE SAME
 15 LANGUAGE USED IN THE COVERED CONTRACT:

16 NOTICE OF CANCELLATION

17 THIS CONTRACT WAS ENTERED INTO ON (ENTER DATE COVERED
 18 CONTRACT SIGNED) . YOU MAY CANCEL THIS CONTRACT FOR THE SALE
 19 OF YOUR HOUSE, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME
 20 BEFORE MIDNIGHT OF (ENTER DATE) . TO CANCEL THIS
 21 TRANSACTION, PERSONALLY DELIVER A SIGNED AND DATED COPY OF THIS
 22 CANCELLATION NOTICE, OR SEND IT BY FAX, UNITED STATES MAIL OR AN
 23 ESTABLISHED COMMERCIAL LETTER DELIVERY SERVICE, INDICATING
 24 CANCELLATION TO (NAME OF PURCHASER) , AT (STREET
 25 ADDRESS OF PURCHASER'S PLACE OF BUSINESS AND FAX NUMBER, IF
 26 ANY) NOT LATER THAN MIDNIGHT OF (ENTER DATE) . IF
 27 YOU WISH TO CANCEL THIS CONTRACT, SIGN AND DATE BOTH COPIES AND
 28 RETURN ONE COPY IMMEDIATELY TO THE PURCHASER. I HEREBY CANCEL
 29 THIS TRANSACTION.

30 _____
 31 (SELLER'S SIGNATURE)

_____ (DATE)

32 F. THE EQUITY PURCHASER SHALL PROVIDE EACH EQUITY SELLER WITH TWO
 33 COPIES OF THE COVERED CONTRACT AND ATTACHED NOTICE OF CANCELLATION. THE
 34 EQUITY PURCHASER SHALL ACCURATELY ENTER THE DATE ON WHICH THE RIGHT TO CANCEL
 35 ENDS.

36 33-764. False or misleading statements; right to rescission;
 37 prohibited acts; violations; classification

38 A. BEFORE MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE DATE ON WHICH
 39 THE COVERED CONTRACT IS EXECUTED, THE EQUITY PURCHASER SHALL NOT DO ANY OF
 40 THE FOLLOWING:

41 1. ACCEPT FROM ANY EQUITY SELLER AN EXECUTION OF, OR INDUCE ANY EQUITY
 42 SELLER TO EXECUTE, ANY INSTRUMENT OF CONVEYANCE OF ANY INTEREST IN THE
 43 RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN DEFAULT.

44 2. RECORD WITH THE COUNTY RECORDER ANY DOCUMENT, INCLUDING ANY
 45 INSTRUMENT OF CONVEYANCE, SIGNED BY THE EQUITY SELLER.

1 3. TRANSFER OR ENCUMBER OR PURPORT TO TRANSFER OR ENCUMBER TO ANY
2 THIRD PARTY ANY INTEREST IN THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE,
3 IN DEFAULT.

4 4. PAY THE EQUITY SELLER ANY CONSIDERATION.

5 5. SUGGEST, ENCOURAGE OR PROVIDE ANY FORM THAT ALLOWS THE EQUITY
6 SELLER TO WAIVE THE EQUITY SELLER'S RIGHT TO CANCEL OR RESCIND UNDER THIS
7 SECTION.

8 B. AN EQUITY PURCHASER SHALL NOT MAKE A FALSE OR MISLEADING STATEMENT
9 REGARDING:

10 1. THE VALUE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN
11 DEFAULT.

12 2. THE AMOUNT OF PROCEEDS THE EQUITY SELLER WILL RECEIVE AFTER A
13 FORECLOSURE SALE PURSUANT TO ARTICLE 2 OF THIS CHAPTER OR A TRUSTEE'S SALE
14 PURSUANT TO CHAPTER 6.1 OF THIS TITLE.

15 3. THE TIMING OF THE JUDICIAL FORECLOSURE PROCESS OR SALE OF TRUST
16 PROPERTY.

17 4. ANY CONTRACT TERM.

18 5. THE EQUITY SELLER'S RIGHTS OR OBLIGATIONS INCIDENT TO OR ARISING
19 OUT OF THE SALE TRANSACTION.

20 6. THE NATURE OF ANY DOCUMENT THAT THE EQUITY PURCHASER INDUCES THE
21 EQUITY SELLER TO SIGN.

22 7. THE SALE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN
23 DEFAULT, OR CONCERNING THE RECONVEYANCE ARRANGEMENT.

24 C. AN EQUITY PURCHASER SHALL NOT REPRESENT, DIRECTLY OR INDIRECTLY,
25 THAT THE EQUITY PURCHASER:

26 1. IS ACTING AS AN ADVISER OR A CONSULTANT FOR OR IN ANY OTHER MANNER
27 IS ACTING ON BEHALF OF THE EQUITY SELLER.

28 2. IS CERTIFIED OR LICENSED IF THIS IS NOT TRUE, OR THAT THE EQUITY
29 PURCHASER IS NOT LICENSED IF THE EQUITY PURCHASER IS ACTUALLY LICENSED.

30 3. IS ASSISTING THE EQUITY SELLER TO SAVE THE HOUSE UNLESS THE EQUITY
31 PURCHASER HAS A GOOD FAITH BASIS FOR THE REPRESENTATION.

32 4. IS ASSISTING THE EQUITY SELLER IN PREVENTING A COMPLETED
33 FORECLOSURE OR TRUSTEE'S SALE UNLESS THE EQUITY PURCHASER HAS A GOOD FAITH
34 BASIS FOR THE REPRESENTATION.

35 D. IT IS UNLAWFUL:

36 1. FOR ANY EQUITY PURCHASER TO INITIATE, ENTER INTO, NEGOTIATE OR
37 CONSUMMATE ANY COVERED CONTRACT INVOLVING RESIDENTIAL REAL PROPERTY IN
38 FORECLOSURE OR SUBJECT TO A TRUSTEE'S SALE, OR, IF APPLICABLE, IN DEFAULT IF
39 THE EQUITY PURCHASER, BY THE TERMS OF SUCH A COVERED CONTRACT, TAKES
40 UNCONSCIONABLE ADVANTAGE OF THE EQUITY SELLER.

41 2. FOR ANY EQUITY PURCHASER TO OPERATE IN THIS STATE WITHOUT A LICENSE
42 PURSUANT TO TITLE 6, CHAPTER 9, ARTICLE 1 OR 2, UNLESS OTHERWISE PROVIDED BY
43 LAW.

44 E. ANY TRANSACTION INVOLVING RESIDENTIAL REAL PROPERTY IN FORECLOSURE
45 OR, IF APPLICABLE, IN DEFAULT THAT IS IN MATERIAL VIOLATION OF SECTION

1 33-763, SUBSECTION A, B OR E, SECTION 33-765 OR THIS SECTION IS VOIDABLE AND
2 MAY BE RESCINDED BY THE EQUITY SELLER WITHIN TWO YEARS AFTER THE DATE OF THE
3 RECORDING OF THE CONVEYANCE OF THE RESIDENTIAL REAL PROPERTY IN FORECLOSURE
4 OR SUBJECT TO A TRUSTEE'S SALE OR, IF APPLICABLE, IN DEFAULT. THE RESCISSION
5 IS EFFECTIVE BY GIVING WRITTEN NOTICE TO THE EQUITY PURCHASER AND THE EQUITY
6 PURCHASER'S SUCCESSOR IN INTEREST, IF THE SUCCESSOR IS NOT A BONA FIDE
7 PURCHASER OR ENCUMBRANCER FOR VALUE AS PROVIDED IN SUBSECTION F OF THIS
8 SECTION, AND BY RECORDING THE NOTICE WITH THE COUNTY RECORDER OF THE COUNTY
9 IN WHICH THE PROPERTY IS LOCATED WITHIN TWO YEARS OF THE DATE AFTER THE
10 RECORDING OF THE CONVEYANCE TO THE EQUITY PURCHASER. THE NOTICE OF
11 RESCISSION SHALL CONTAIN THE NAME OF THE EQUITY SELLER AND THE NAME OF THE
12 EQUITY PURCHASER IN ADDITION TO ANY SUCCESSOR IN INTEREST HOLDING RECORD
13 TITLE TO THE RESIDENTIAL REAL PROPERTY AND SHALL PARTICULARLY DESCRIBE THE
14 RESIDENTIAL REAL PROPERTY. THE EQUITY PURCHASER AND THE EQUITY PURCHASER'S
15 SUCCESSOR IN INTEREST, IF THE SUCCESSOR IS NOT A BONA FIDE PURCHASER OR
16 ENCUMBRANCER FOR VALUE AS SET FORTH IN SUBSECTION F OF THIS SECTION, SHALL
17 HAVE TWENTY DAYS AFTER THE DELIVERY OF THE NOTICE IN WHICH TO RECONVEY TITLE
18 TO THE PROPERTY FREE AND CLEAR OF ENCUMBRANCES CREATED SUBSEQUENT TO THE
19 RESCINDED TRANSACTION AND DUE TO THE ACTIONS OF THE EQUITY PURCHASER. AS A
20 CONDITION OF THE RECONVEYANCE OF TITLE, THE EQUITY SELLER SHALL RETURN TO THE
21 EQUITY PURCHASER ANY CONSIDERATION RECEIVED FROM THE EQUITY PURCHASER AS PART
22 OF THE ORIGINAL TRANSACTION. ON FAILURE TO RECONVEY TITLE WITHIN THIS TIME,
23 THE EQUITY SELLER MAY BRING AN ACTION TO ENFORCE THE RESCISSION AND FOR
24 CANCELLATION OF THE COVERED CONTRACT AND DEED.

25 F. SUBSECTION E OF THIS SECTION DOES NOT AFFECT THE INTEREST OF A BONA
26 FIDE PURCHASER OR ENCUMBRANCER FOR VALUE IF THE PURCHASE OR ENCUMBRANCE
27 OCCURRED BEFORE THE RECORDING OF THE NOTICE OF RESCISSION PURSUANT TO
28 SUBSECTION E OF THIS SECTION. KNOWLEDGE THAT THE PROPERTY WAS RESIDENTIAL
29 REAL PROPERTY IN FORECLOSURE OR SUBJECT TO A TRUSTEE'S SALE OR, IF
30 APPLICABLE, IN DEFAULT SHALL NOT IMPAIR THE STATUS OF SUCH PERSONS OR
31 ENTITIES AS BONA FIDE PURCHASERS OR ENCUMBRANCERS FOR VALUE. SUBSECTION E OF
32 THIS SECTION DOES NOT ABROGATE ANY DUTY OF INQUIRY THAT EXISTS AS TO RIGHTS
33 OR INTERESTS OF PERSONS IN POSSESSION OF THE RESIDENTIAL REAL PROPERTY IN
34 FORECLOSURE OR SUBJECT TO A TRUSTEE'S SALE OR, IF APPLICABLE, IN DEFAULT. IN
35 ANY ACTION BROUGHT TO ENFORCE A RESCISSION PURSUANT TO SUBSECTION E OF THIS
36 SECTION, A COURT MAY AWARD TO A PREVAILING EQUITY SELLER COSTS AND REASONABLE
37 ATTORNEY FEES.

38 G. AN EQUITY SELLER MAY BRING AN ACTION FOR THE RECOVERY OF DAMAGES OR
39 EQUITABLE RELIEF AGAINST AN EQUITY PURCHASER FOR A VIOLATION OF SECTION
40 33-763, SUBSECTION A, B OR E, SECTION 33-765 OR THIS SECTION. A COURT MAY
41 AWARD TO A PREVAILING EQUITY SELLER ACTUAL DAMAGES PLUS REASONABLE ATTORNEY
42 FEES AND COSTS. IN ADDITION, THE COURT MAY AWARD EQUITABLE RELIEF OR
43 INCREASE THE AWARD IN AN AMOUNT NOT TO EXCEED THREE TIMES THE EQUITY SELLER'S
44 ACTUAL DAMAGES, OR BOTH, IF THE COURT DEEMS SUCH AN AWARD PROPER. ANY ACTION

1 BROUGHT PURSUANT TO THIS SECTION SHALL BE COMMENCED WITHIN SIX YEARS AFTER
2 THE DATE OF THE ALLEGED VIOLATION.

3 H. ANY EQUITY PURCHASER WHO:

4 1. WITH INTENT TO DEFRAUD, VIOLATES SUBSECTION A, B, C OR D OF THIS
5 SECTION OR ENGAGES IN ANY PRACTICE THAT WOULD OPERATE AS CRIMINAL FRAUD OR
6 DECEIT ON AN EQUITY SELLER, ON CONVICTION, IS GUILTY OF A CLASS 5 FELONY AND
7 IS SUBJECT TO A FINE OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR
8 IMPRISONMENT, OR BOTH.

9 2. KNOWINGLY VIOLATES SUBSECTION A, B, C OR D OF THIS SECTION, ON
10 CONVICTION, IS GUILTY OF A CLASS 1 MISDEMEANOR AND IS SUBJECT TO A FINE OF
11 NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR IMPRISONMENT, OR BOTH. A
12 SECOND OFFENSE WITHIN FIVE YEARS IS A CLASS 5 FELONY AND IS SUBJECT TO A FINE
13 OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR IMPRISONMENT, OR BOTH.

14 3. IF ACTING IN GOOD FAITH, VIOLATES SUBSECTION A, B, C OR D OF THIS
15 SECTION IS NOT GUILTY OF THE VIOLATION IF THE EQUITY PURCHASER:

16 (a) ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMPLIANCE
17 FAILURE WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR
18 NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO AVOID
19 SUCH ERRORS.

20 (b) NOTIFIES THE EQUITY SELLER WITHIN NINETY DAYS AFTER THE CONTRACT
21 DATE OF THE COMPLIANCE FAILURE.

22 (c) MAKES APPROPRIATE RESTITUTION TO THE EQUITY SELLER AND APPROPRIATE
23 ADJUSTMENTS TO THE TRANSACTION WITHIN NINETY DAYS AFTER THE CONTRACT DATE.
24 EXAMPLES OF BONA FIDE ERRORS INCLUDE CLERICAL, CALCULATION, COMPUTER
25 MALFUNCTION AND PROGRAMMING AND PRINTING ERRORS. AN ERROR OF LEGAL JUDGMENT
26 WITH RESPECT TO A PERSON'S OBLIGATIONS UNDER THIS ARTICLE IS NOT A BONA FIDE
27 ERROR, NOR IS A FAILURE TO PROVIDE NOTICES OR OTHER MATERIAL INFORMATION
28 REQUIRED BY THIS ARTICLE.

29 33-765. Mortgage loan transaction; reconveyance; requirements;
30 definitions

31 A. IN ADDITION TO THE REQUIREMENTS OF THIS ARTICLE, A TRANSACTION
32 DEEMED TO BE A MORTGAGE LOAN UNDER THIS ARTICLE IS SUBJECT TO ARTICLES 1 AND
33 2 OF THIS CHAPTER.

34 B. ANY TRANSACTION IN WHICH AN EQUITY SELLER PURPORTS TO GRANT A
35 RESIDENCE THAT IS IN FORECLOSURE, SUBJECT TO A TRUSTEE'S SALE OR IN DEFAULT
36 TO AN EQUITY PURCHASER BY ANY INSTRUMENT THAT APPEARS TO BE AN ABSOLUTE
37 CONVEYANCE AND RESERVES TO THE EQUITY SELLER OR IS GIVEN BY THE EQUITY
38 PURCHASER AN OPTION TO REPURCHASE CREATES A PRESUMPTION THAT THE TRANSACTION
39 IS A LOAN TRANSACTION, WHICH MAY BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE
40 TO THE CONTRARY, AND THAT THE PURPORTED ABSOLUTE CONVEYANCE IS A MORTGAGE OR
41 DEED OF TRUST.

42 C. AN EQUITY PURCHASER SHALL NOT ENTER INTO A RECONVEYANCE ARRANGEMENT
43 UNLESS:

44 1. THE EQUITY PURCHASER VERIFIES BY APPROPRIATE DOCUMENTATION THAT THE
45 EQUITY SELLER HAS OR IS LIKELY TO HAVE A REASONABLE ABILITY TO PAY FOR THE

1 SUBSEQUENT CONVEYANCE OF AN INTEREST BACK TO THE EQUITY SELLER. IN THE CASE
2 OF A LEASE WITH AN OPTION TO PURCHASE, PAYMENT ABILITY ALSO INCLUDES THE
3 REASONABLE ABILITY TO PURCHASE THE PROPERTY WITHIN THE TERM OF THE OPTION TO
4 PURCHASE. THERE IS A REBUTTABLE PRESUMPTION THAT THE EQUITY PURCHASER HAS
5 NOT VERIFIED REASONABLE PAYMENT ABILITY IF THE EQUITY PURCHASER HAS NOT
6 OBTAINED DOCUMENTS OTHER THAN A STATEMENT BY THE EQUITY SELLER OF ASSETS,
7 LIABILITIES AND INCOME. THE STANDARD FOR DETERMINING A REASONABLE ABILITY TO
8 PAY SHALL BE THE SAME AS GUIDELINES SET FORTH BY THE UNITED STATES DEPARTMENT
9 OF HOUSING AND URBAN DEVELOPMENT'S FEDERAL HOUSING ADMINISTRATION.

10 2. THE EQUITY PURCHASER AND THE EQUITY SELLER COMPLETE A CLOSING FOR
11 ANY RECONVEYANCE ARRANGEMENT IN WHICH THE EQUITY PURCHASER OBTAINS A DEED OR
12 MORTGAGE FROM THE EQUITY SELLER. FOR THE PURPOSES OF THIS PARAGRAPH,
13 "CLOSING" MEANS AN IN-PERSON MEETING TO COMPLETE FINAL DOCUMENTS INCIDENT TO
14 THE SALE OF THE REAL PROPERTY OR CREATION OF A MORTGAGE OR DEED OF TRUST ON
15 THE REAL PROPERTY CONDUCTED BY A LICENSED ESCROW AGENT OR AN ATTORNEY WHO IS
16 NOT EMPLOYED BY OR AN AFFILIATE OF THE EQUITY PURCHASER.

17 3. THE EQUITY PURCHASER OBTAINS WRITTEN CONSENT FROM THE EQUITY SELLER
18 BEFORE THE EQUITY PURCHASER GRANTS ANY INTEREST IN THE PROPERTY TO ANYONE
19 ELSE DURING THE TIME THE EQUITY SELLER MAINTAINS AN INTEREST IN THE PROPERTY,
20 INCLUDING AN OPTION TO REPURCHASE.

21 4. THE EQUITY PURCHASER NOTIFIES ALL EXISTING DEED OF TRUST OR
22 MORTGAGE LIENHOLDERS OF THE EQUITY PURCHASER'S INTENT TO ACCEPT CONVEYANCE OF
23 AN INTEREST IN THE PROPERTY FROM THE EQUITY SELLER AND FULLY COMPLIES WITH
24 ALL TERMS AND CONDITIONS CONTAINED IN THE DEED OF TRUST OR MORTGAGE LIEN
25 DOCUMENTS, INCLUDING DUE-ON-SALE PROVISIONS OR MEETING ALL QUALIFICATION
26 REQUIREMENTS FOR ASSUMING THE REPAYMENT OF THE MORTGAGE OR DEED OF TRUST.

27 D. AN EQUITY PURCHASER SHALL NOT ENTER INTO REPURCHASE OR LEASE TERMS
28 AS PART OF THE RECONVEYANCE ARRANGEMENT THAT ARE UNFAIR OR COMMERCIALY
29 UNREASONABLE AND SHALL NOT ENGAGE IN ANY OTHER UNFAIR OR UNCONSCIONABLE
30 CONDUCT.

31 E. AS PART OF A RECONVEYANCE ARRANGEMENT, AN EQUITY PURCHASER SHALL
32 EITHER:

33 1. ENSURE THAT TITLE TO THE RESIDENCE IS RECONVEYED TO THE EQUITY
34 SELLER.

35 2. MAKE A PAYMENT TO THE EQUITY SELLER IN AN AMOUNT OF AT LEAST
36 EIGHTY-TWO PER CENT OF THE FAIR MARKET VALUE OF THE PROPERTY WITHIN ONE
37 HUNDRED TWENTY DAYS AFTER THE EQUITY SELLER'S EVICTION FROM OR VOLUNTARY
38 RELINQUISHMENT OF POSSESSION OF THE RESIDENCE. THE EQUITY PURCHASER SHALL
39 MAKE A DETAILED ACCOUNTING OF THE BASIS FOR THE PAYMENT AMOUNT OR A DETAILED
40 ACCOUNTING OF THE REASONS FOR FAILURE TO MAKE A PAYMENT, INCLUDING PROVIDING
41 WRITTEN DOCUMENTATION OF EXPENSES, WITHIN THE ONE HUNDRED TWENTY DAY PERIOD.
42 THE ACCOUNTING SHALL BE ON A FORM PRESCRIBED BY THE DEPARTMENT OF FINANCIAL
43 INSTITUTIONS. FOR PURPOSES OF THIS PARAGRAPH:

(a) THERE IS A REBUTTABLE PRESUMPTION THAT AN APPRAISAL BY A PERSON LICENSED OR CERTIFIED BY AN AGENCY OF THE FEDERAL GOVERNMENT OR THIS STATE TO APPRAISE REAL ESTATE ESTABLISHES THE FAIR MARKET VALUE OF THE PROPERTY.

(b) THE TIME FOR DETERMINING THE FAIR MARKET VALUE AMOUNT SHALL BE DETERMINED IN THE RECONVEYANCE ARRANGEMENT EITHER AT THE TIME OF THE EXECUTION OF THE RECONVEYANCE ARRANGEMENT OR AT RESALE TO A BONA FIDE PURCHASER. IF THE COVERED CONTRACT STATES THAT THE FAIR MARKET VALUE SHALL BE DETERMINED AT THE TIME OF RESALE, THE FAIR MARKET VALUE SHALL BE THE RESALE PRICE IF IT IS SOLD WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EQUITY SELLER'S EVICTION FROM OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY. IF THE COVERED CONTRACT STATES THAT THE FAIR MARKET VALUE SHALL BE DETERMINED AT THE TIME OF RESALE AND THE RESALE IS NOT COMPLETED WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EQUITY SELLER'S EVICTION FROM OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY, THE FAIR MARKET VALUE SHALL BE DETERMINED BY AN APPRAISAL CONDUCTED WITHIN TEN DAYS AFTER THE END OF THE ONE HUNDRED TWENTY DAY PERIOD, AND PAYMENT, IF REQUIRED, SHALL BE MADE TO THE EQUITY SELLER. IF PAYMENT IS NOT MADE TO THE EQUITY SELLER AT THE TIME, THE FAIR MARKET VALUE SHALL BE RECALCULATED AS THE RESALE PRICE ON RESALE, AND PAYMENT SHALL BE MADE TO THE EQUITY SELLER WITHIN FIFTEEN DAYS AFTER RESALE. A DETAILED ACCOUNTING OF THE BASIS FOR THE PAYMENT AMOUNT SHALL BE MADE WITHIN FIFTEEN DAYS OF RESALE, INCLUDING PROVIDING WRITTEN DOCUMENTATION OF EXPENSES. THE ACCOUNTING SHALL BE ON A FORM PRESCRIBED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

F. THIS SECTION DOES NOT ABROGATE ANY DUTY OF INQUIRY THAT EXISTS AS TO RIGHTS OR INTERESTS OF PERSONS IN POSSESSION OF THE RESIDENTIAL REAL PROPERTY THAT IS IN FORECLOSURE, SUBJECT TO TRUSTEE'S SALE OR IN DEFAULT.

G. ALL DEEDS OR CONVEYANCES SUBJECT TO A RECONVEYANCE ARRANGEMENT SHALL STATE EXPLICITLY ON THE FACE OF THE DOCUMENT THAT THE CONVEYANCE IS SUBJECT TO A RECONVEYANCE ARRANGEMENT AND SHALL STATE IN THE BODY OF THE CONVEYANCE INSTRUMENT THE TERMS OF THE RECONVEYANCE ARRANGEMENT. ALL RECONVEYANCE ARRANGEMENTS MUST BE SIMULTANEOUSLY RECORDED BY THE EQUITY PURCHASER WITH THE SUBJECT DEED IN THE COUNTY RECORDER'S OFFICE OF THE COUNTY WHERE THE PROPERTY IS LOCATED.

H. FOR THE PURPOSES OF THIS SECTION:

1. "CONSIDERATION" MEANS ANY PAYMENT OR THING OF VALUE PROVIDED TO THE EQUITY SELLER, INCLUDING UNPAID LEASE PAYMENTS OWED BY THE EQUITY SELLER BEFORE THE DATE OF EVICTION OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY, REASONABLE COSTS PAID TO THIRD PARTIES NECESSARY TO COMPLETE THE RECONVEYANCE TRANSACTION, PAYMENT OF MONIES TO SATISFY A DEBT OR LEGAL OBLIGATION OF THE EQUITY SELLER OR THE REASONABLE COST OF REPAIRS FOR DAMAGE TO THE DWELLING CAUSED BY THE EQUITY SELLER BEYOND ORDINARY WEAR AND TEAR, BUT DOES NOT INCLUDE AMOUNTS IMPUTED AS ANY FEE PAID DIRECTLY OR INDIRECTLY TO THE EQUITY PURCHASER, OR THE EQUITY PURCHASER'S REPRESENTATIVE, INCIDENT TO A RECONVEYANCE ARRANGEMENT, EXCEPT FOR REASONABLE COSTS PAID TO THIRD PARTIES NECESSARY TO COMPLETE THE RECONVEYANCE.

2. "RESALE" MEANS A BONA FIDE MARKET SALE OF THE PROPERTY SUBJECT TO THE RECONVEYANCE ARRANGEMENT BY THE EQUITY PURCHASER TO AN UNAFFILIATED THIRD PARTY.

3. "RESALE PRICE" MEANS THE PURCHASE PRICE OF THE PROPERTY ON RESALE.
33-766. Limiting provisions

ANY PROVISION OF A COVERED CONTRACT THAT ATTEMPTS OR PURPORTS TO LIMIT THE LIABILITY OF THE EQUITY PURCHASER UNDER THIS ARTICLE IS VOID. INCLUSION OF THE PROVISION, AT THE OPTION OF THE EQUITY SELLER, SHALL RENDER THE COVERED CONTRACT VOID. THE EQUITY PURCHASER IS LIABLE TO THE EQUITY SELLER FOR ALL DAMAGES PROXIMATELY CAUSED BY THE PROVISION. ANY PROVISION IN A COVERED CONTRACT THAT ATTEMPTS OR PURPORTS TO REQUIRE ARBITRATION OF ANY DISPUTE ARISING UNDER THIS ARTICLE SHALL BE VOID AT THE OPTION OF THE EQUITY SELLER.

33-767. Injunction; civil penalty

IN ADDITION TO THE OTHER REMEDIES PROVIDED, IF A VIOLATION OF THIS ARTICLE OCCURS, APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THIS STATE TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION AND, ON NOTICE TO THE DEFENDANT OF AT LEAST FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE VIOLATION. IF THE COURT OR JUSTICE DETERMINES THAT THE DEFENDANT HAS VIOLATED THIS ARTICLE, THE COURT OR JUSTICE MAY ISSUE AN INJUNCTION ENJOINING AND RESTRAINING ANY FURTHER VIOLATION WITHOUT REQUIRING PROOF THAT ANY PERSON HAS ACTUALLY BEEN INJURED OR DAMAGED. IN ANY PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL PURSUANT TO ALL APPLICABLE LAWS OR RULES AND DIRECT RESTITUTION. IF THE COURT DETERMINES THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL MAY TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND ISSUE SUBPOENAS IN ACCORDANCE WITH ALL APPLICABLE LAWS AND RULES.

33-768. Prior lienholder

THIS ARTICLE DOES NOT APPLY TO A PRIOR LIENHOLDER IF THE LIEN WAS PROPERLY RECORDED BEFORE THE EXECUTION OF ANY COVERED CONTRACT BY BOTH THE EQUITY SELLER AND THE EQUITY PURCHASER, AND THIS ARTICLE SHALL NOT IMPAIR ANY EQUITY OR OTHER AVAILABLE RIGHTS OF ANY PRIOR LIENHOLDER.

33-769. Article provisions not exclusive; rights and obligations not affected; waivers void; severability

A. THIS ARTICLE IS NOT EXCLUSIVE AND IS IN ADDITION TO ANY OTHER REQUIREMENTS, RIGHTS, REMEDIES AND PENALTIES PROVIDED BY LAW.

B. THIS ARTICLE DOES NOT AFFECT OR ALTER THE RIGHTS AND OBLIGATIONS OF A MORTGAGOR AND A MORTGAGEE WITH RESPECT TO A MORTGAGE, OR A TRUSTOR, TRUSTEE OR BENEFICIARY WITH RESPECT TO A DEED OF TRUST.

C. ANY WAIVER OF ANY PROVISION OF THIS ARTICLE IS VOID AND UNENFORCEABLE AS CONTRARY TO PUBLIC POLICY.

1 D. IF ANY PROVISION OF THIS ARTICLE OR ANY APPLICATION OF THIS ARTICLE
2 TO ANY PERSON OR CIRCUMSTANCES IS HELD UNCONSTITUTIONAL, THE REMAINDER OF
3 THIS ARTICLE AND THE APPLICATION OF ITS PROVISIONS TO OTHER PERSONS AND
4 CIRCUMSTANCES SHALL NOT BE AFFECTED.

5 Sec. 4. Short title

6 This act shall be known and may be cited as the "Arizona Home Equity
7 Theft Prevention Act".